

87-667 ①

Supreme Court, U.S.
FILED

JUL 25 1987

JOSEPH F. SPANIOL, JR.
CLERK

CASE NO:

In the SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER 1987

CAPTION: WILLIAM F. SMITH, SR.,

PETITIONER

vs.

UNITED STATES MERIT SYSTEM

PROTECTION BOARD, (OFFICE OF

PERSONNEL MANAGEMENT, CSA)

RESPONDENT

PROCEEDING: PETITION FOR WRITS OF

CERTIORARI TO THE U.S. COURT

OF APPEALS FOR FEDERAL DISTRICT

TITLE: PETITION TO COURT

COUNSEL OF RECORD FOR PETITIONER:

ARCHIBALD W. MCMILLAN
care of Dayton Chapter
National Association for the
Advancement of Colored People
1528 W. Third Street
Dayton, Ohio 45407

54 PM

QUESTIONS PRESENTED

(1) Did not MSPB Decision of May 29, 1986 that Petitioner's military disability was not the result of injuries in combat or by an instrumentality of war arbitrarily disregard the nature of the Ku Klux Klan's long continuing campaign to destroy the U.S. Constitutional system and Democratic character of the U.S. Government? (2) Were not the acts of

Mayhem on the Petitioner while in military service at Fort Benning, Georgia, criminal acts which should be recorded in official U.S. Army records? (3) Have not

Petitioner's Civil Service Retirement and Military Retirement Pension been improperly computed as regards (a) current payments, and (b) the initial 10%, military disability severance pay awarded in October 1962? (4) Is not Petitioner entitled to compensation for various

damages he incurred as the result of the Government mishandling his military Separation and Retirement from 1962 through 1967? (5) Does not Public Law 96-499 (enacted December 5, 1980) contain an exception in application to this case?

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PARTIES TO THE ACTION

Parties to the action are Petitioner,
William F. Smith, Sr., and Respondents, (i)
The United States Merit System Protection
(iii)



Board (Office of Personnel Management, CSA
2-452-388) and United States Court of
Appeals (Federal Circuit).



TABLE OF AUTHORITIES

5 U.S. Code 8339(g) (1) and (2)

96 U.S. Code 499 supplementing 5 USC
8339(g)

5 U.S. Code 8337 (c) (1) and (2)

Rules of the Supreme Court #19, 20, 21, 23

U.S. Constitution and Bill of Rights esp
Amendments #1, 2, 4, 5, 9, 13, qne 14.

ACTIONS CHALLENGED

(1) United States Merit System Protection
Board (Office of Personnel Management
Agency, CSA 2-452-888), Docket Numbers
CH 08318610228 and CH 08318610361,
decisions dated May 29, 1986 and November
14, 1986.

(2) U.S. Court of Appeals (Federal
District) Decisions dated April 20 1987 and
June 5, 1987



SUPPORTING COUNSEL FOR PETITIONER

Charles E. Carter, Associate General
Counsel

National Headquarters, National Association
for the Advancement of Colored People
4805 Mt. Hope Drive
Baltimore, MD 21218



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The Petitioner/Appellant (hereinafter referred to as "Petitioner") requests (i) that the Honorable Court invalidate, reverse, and correct the Decisions of the U.S. Court of Appeals for the Federal Circuit dated April 20, 1987 (copies of that decision will be attached) and June 5, 1987 affirming the Decisions of the Merit Systems Protection Board (Office of Personnel Management, Appellate Policies Division) dated November 14, 1986 and May 29, 1986. (ii) Petitioner also requests that the official records of his military service in the U.S. Army be corrected to show the existence of service connected disabilities sufficient to enable Petitioner to qualify for Government



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sponsored G.I. Insurance.

(iii) Petitioner further requests that the court records be corrected to show that Petitioner is entitled to reimbursement of financial and property damages incurred by him as the result of administrative neglect by Government officials during the period of the military severance of Petitioner from his U.S. Presidential Appointment in the Regular Army without due process. (iv) To accomplish the requested invalidations, reversals, and corrections, the Petitioner accordingly requests that appropriate writs of certiorari be issued against the Defendants. In support of this Petition, Petitioner alleges as follows:

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(1) The MSPB Decision dated May 29, 1986, which the Circuit Court accepted, made an arbitrary decision that Petitioner's military disability retirement payments were not the result of injuries received in combat or by an instrumentality of war. But it is clear that such injuries were first created by the abduction and attacks on a Career Regular Army Captain (the Petitioner) at Fort Benning, Georgia by men disguised as military officers (William Hodson and Archie Bourret). These were Ku Klux Klan members in 1961, and the said Ku Klux Klan often claims to be a group of freedom fighters comparable to the soldiers of the American Revolution who were carrying on



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the war of Independence against the British Monarchy. The acts of personal injury inflicted upon petitioner were certainly criminal acts of mayhem, and criminal acts of mayhem performed by self-styled freedom fighters certainly are acts of war. The Ku Klux Klan certainly has been and is an enemy of the USA and our constitutional system. If such system is destroyed as the KKK and similar Aryan supremacy groups desire, the USA would no longer exist. The Consitutional provisions for Equal Protection of the law and Due Process certainly should protect the petitioner against arbitrary denial of the protection of minority persons against this terrible type of violent action of



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the KKK type of Public Enemy. Those who physically resist the KKK are comparable to those heroes who fought Hitler in officially recognized military combat. A recent radio program over station WGUC (U of Cincinnati) quoted an official of the Jewish Anti-Defamation League as stating that the KKK has declared war on the USA.

(2) The acts of mayhem petitioner has alleged, if found not to be acts of war, nevertheless were highly illegal, criminal acts by persons some of whom were then or later became Government employees, which fact should be recorded in the records of the Army both at Fort Benning, Georgia, and at the Walter Reed Army Medical Center, D.C., as acts of extreme criminal

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character. The refusal or failure to record such acts bears a strong resemblance to the Watergate cover up, and petitioner strongly believes and requests that such acts be ordered to be officially recorded. Such acts bear a strong resemblance to the acts for which one time Nazi Barbie has recently been tried in Europe.

(3) The MSPB Decision dated May 29, 1986 (para. 8), which the Circuit Court has accepted, completely disregarded the provision of 5 USC 8339(g) for increasing the service performed by U.S. Civil Service employees by the period of time between the date of disability separation and the date 60 years of age would be

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attained. Petitioner retired for disability reasons at the age of 51, and the nine years added under the cited provision would require that 18% be added to the Petitioner's present combined total for Civil Service Disability Retirement and Military Disability Pension computed on Appellant's three high years of pay. This is a gross violation of applicable statutory requirements.

(4) The Circuit Court has accepted the reasoning in the MSPB May 29, 1986 Decision that Petitioner's Military Retirement Pension combined with his Civil Service Retirement annuity, was not less than 40% minimum guaranteed annuity and therefore has not shown that he should



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have an "appropriate amount" added to his civil service annuity. Facts to the contrary certainly would have been submitted by Petitioner if the hearing that he requested had been granted. Petitioner's Civil Service Retirement is based on seven years and four months of service, which converts to approximately 11% instead of 40% of his three high years, and now with COLAs amounts to approximately \$765 per month represents the equivalent of another 22%, the two adding up to about 33% instead of the 40% statutory minimum. To establish the statutory minimum of 40%, it should be obvious that an additional 7% of the three high years average should be added to correct this deficiency if the 18%



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required by the nine years of early retirement is not added as contended in paragraph (3) above. See 5 USC 8339(g). Petitioner also contends that his Civil Service Disability was improperly computed on the basis of his average salary over seven years plus of employment rather than the three high years as required by law.

(5) Respondent has cited 5 USC 8339(g) as stating that the Civil Service Disability shall be computed pursuant to 5 USC 8339(g). However Respondent's contention overlooks the supplementary language of 8339(g) as added by 96 USC 499 that, if the amount of the annuity so computed plus military retired pay is less than the amount payable under 8339(g)(1) or (2), an amount equal to the difference

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shall be added to the annuity, which would clearly require the adding of a credit for the nine years elapsing between petitioner's date of separation and the date he became age 60, or at least the additional 7% between his current payments of 33% and the statutory minimum of 40%. This has not been done, and clearly must be done, even if Petitioner's military injuries are not considered to be war connected despite what Petitioner is contending in paragraphs (1) and (2) above.

(6) It has been contended by the MSPB May 29, 1986 Decision that Public Law 96-499 effective December 5, 1980, eliminates the "guaranteed minimum" annuity provision for Civil Service Disability retirees who



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receiving military retirement pay or VA compensation in lieu thereof. However, 5 US Code 8339(g), 8337(c)(1) and (2) as updated and printed in their current official publication text do not reflect this interpretation of P.L. 96-499, and Petitioner therefore contends that the respondent and the Circuit Court of Appeals have improperly interpreted P.L. 96-499.

(7) In October 1962, a 10% military disability severance pay was arbitrarily awarded without due process and based upon falsified military medical records, and such records have not been corrected to this date in 1987, although Petitioner was actually 100% disabled for an extended period of time through 1962 and beyond.

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This injustice was later partially rectified by awarding TDRL (Temporary Disability Retirement) of 40%, even though the disability actually continued at 100% for several years. In January/February 1963, when Petitioner was too disabled to appear in court, attend any hearing, or even consult a lawyer, Petitioner's ex-wife, Beatrice Duncan Smith (now Moore) was permitted to attach Petitioner's severance pay, and she then received the greater portion thereof in a lump sum. However, she was gainfully employed whereas Petitioner was totally disabled and without a source of income. Even 50% of the amount in a lump sum she received would have been excessive. Petitioner



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contends that the military or other Government agency responsible for the disbursement of his military disability severance pay should have acted to protect a completely disabled veteran from this unethical diversion of his disability severance pay and advised the court which ordered the diversion that its order was improperly issued against a completely and temporarily disabled and incompetent veteran because of petitioner's extreme physical problems resulting from mayhem. The stolen monthly base pay and the court attachment of severance pay in tandem were events that created extreme financial hardship for a 100% disabled veteran.

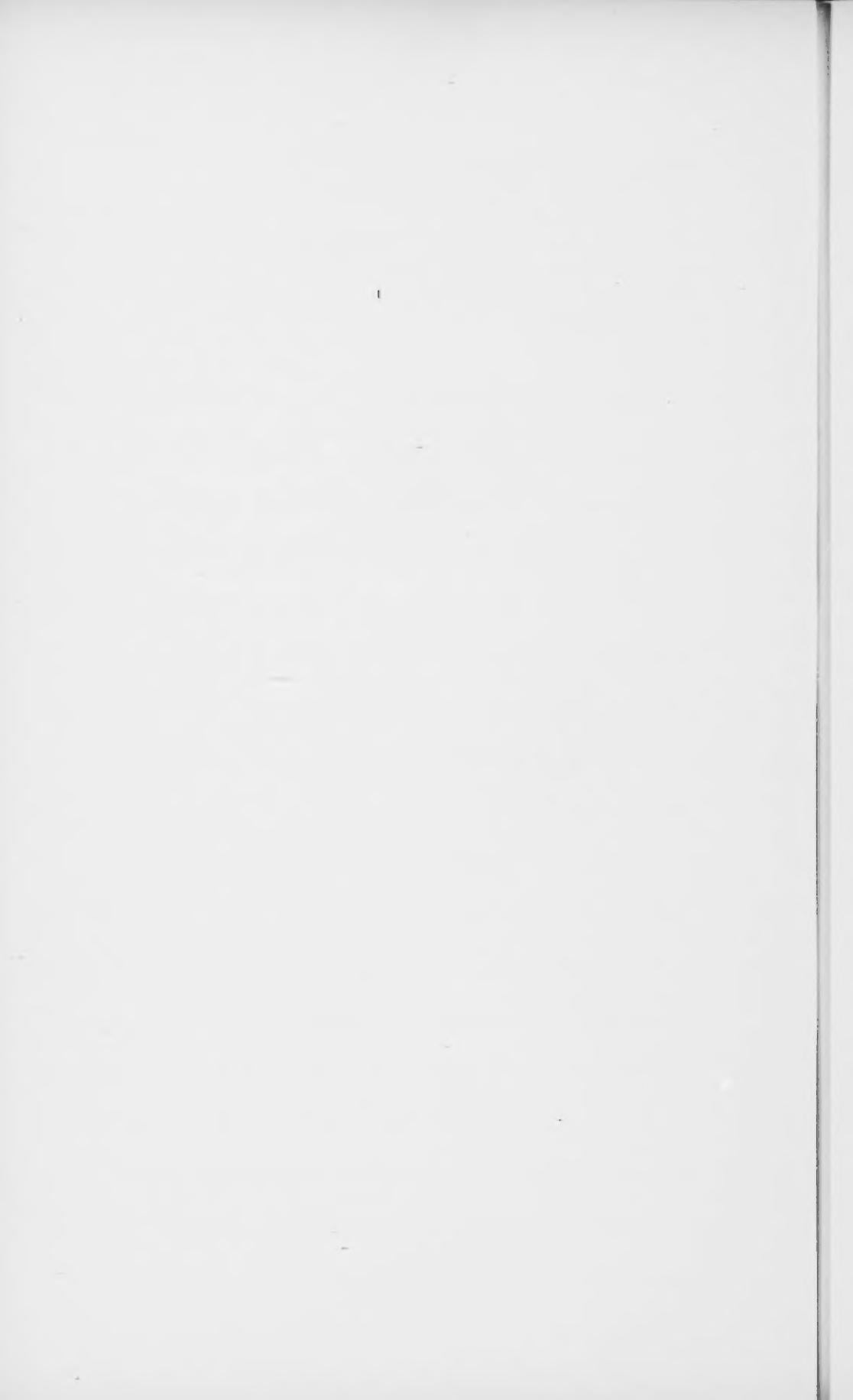
(8) The Circuit Court has overlooked the fact that various other property and



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financial damages resulted to Appellant as the result of administrative neglect by Government Officials during the period of the military severance of Petitioner from his U.S. Presidential appointment in the Regular Army without due process, for which it is contended that he should be reimbursed with appropriate interest, as follows:

(a) Reimbursed severance pay or awarded full military pay and allowance as a Regular Army Captain for the period from October 1962 to 1 August 1967. This is necessary to rectify the financial losses from unemployability from 1962 to 1968, other than the pain and suffering involved. Reimburse military base pay that was administratively stolen for five (5)



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months from March through July 1962 with appropriate interest. SFC Evans was a key person in this arrangement.

(b) Reimbursed the \$10,000 plus as the current outstanding loans against both his and his wife's life insurance policies that were used to defray the cost of graduate studies to obtain a professional degree in hospital administration (Xavier University of Ohio, 1973-1975).

(c) Reimbursed for the loss of commercial life insurance with the Mutual of New York, such policy having a disability waiver of premium clause. When the conditions that caused the disability were explained to the insurance company, the \$40,000 policy was cancelled. Either the military medical records had been



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falsified or the U.S. Army failed to document properly the military disability the Appellant had incurred in 1962. The waiver of premium clause would have entitled him to continued coverage with payments.

(d) The USAA car insurance policy on Petitioner's auto was cancelled because of the financial stringencies he had been forced into, and his auto, conservatively value at \$2,000.00 was shortly thereafter stolen in 1963.

(e) Reimburse Petitioner's sister who lost her home in Columbus, Ohio while she was caring for Petitioner with his sizeable expenses. His sister was a widow with 10 children. This period was from 1962 to 1967 when all military pay was



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being withheld from Petitioner to recoup the severance disability amount that had been awarded in a great amount to his ex-wife, Beatrice Duncan Smith. This sister's equity which was lost amounted to \$12,000 to \$15,000. Her property was purchased by the City of Columbus, Ohio after foreclosure.

(f) From 1978 to 1981, Petitioner was serving as Chief, Medical Administration Service at the Philadelphia VA Medical Center and the Northport, N.Y. VA Medical Center, respectively. Intense criminal harassment prompted Petitioner to file for retirement and to move his family from Northport LI, N.Y. to Dayton, Ohio in May 1981 at a moving cost of over \$13,000. The management person involved in this



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harassment included the two KKK members (William Hodson and Archie Bourret) mentioned in paragraph (1) foregoing. This expense should be reimbursed.

(g) Damages to which Petitioner is entitled as set forth in subparagraphs (a) to (f) above should include interest computed on the principal amounts from the dates of the respective principal losses. Correct military medical records reflect the real internal and external injuries that constitute the mayhem.

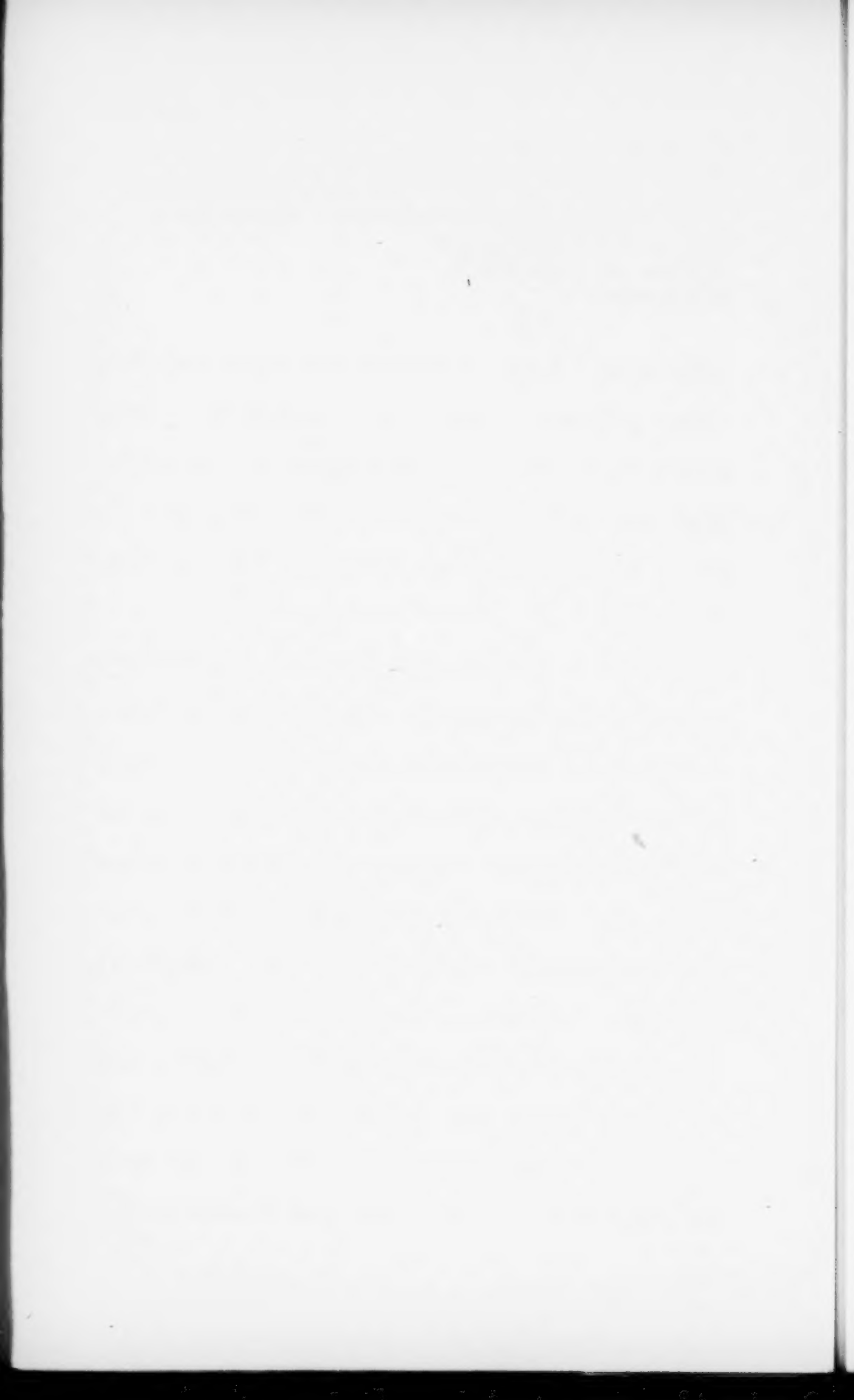
(h) Because Petitioner service connected disability is not shown on the official records, he has not been able to obtain GI Life Insurance. This is important, since Petitioner's disability has disqualified him from obtaining life



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insurance from Northwestern Life and two other private insurance companies. The court is therefore also requested to order that the official records be corrected so that Appellant can qualify for GI Life Insurance.

(9) The petitioner therefore respectfully requests the Honorable Court to issue an appropriate writ of certiorari to invalidate and reverse the Decision of the U.S. Circuit Court of Appeals dated April 20, 1987 and confirmed June 5, 1987 which affirmed the Decision of the Merit Systems dated November 14, 1986. Petitioner further requests that the Court in such writ of certiorari specify the separate adjustments that should be made in Petitioner's Civil Service Disability



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Retirement Annuity and Military Disability Pension. Petitioner also requests that appropriate reimbursement be ordered in such writ of certiorari for the damages incurred by Petitioner as the result of various deficient and negligent Government actions as set forth in paragraph 8(a) to 8(h) of this appeal. If any further evidence and data are needed to carry out the adjustments, corrections and reimbursements so ordered, appropriate hearings at the level of respondent and the Circuit Court of Appeals should also be ordered, and said respondent and Circuit Court of Appeals should also be ordered to submit to the Honorable Court such records and documents as the Honorable Court may require in and for the

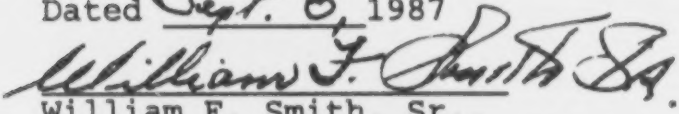


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preparation and drafting of the necessary writs of certiorari.

The foregoing petition and appeal have been signed by me and is hereby respectfully submitted to the United States Supreme Court.

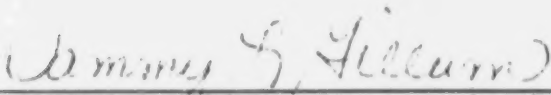
Dated Sept. 8, 1987



William F. Smith, Sr.,
Petitioner and Appellant

COUNTY OF MONTGOMERY
STATE OF OHIO

The foregoing document has been acknowledged before me by William F. Smith, Sr., as his true statement this 8 day of Sept. 1987.



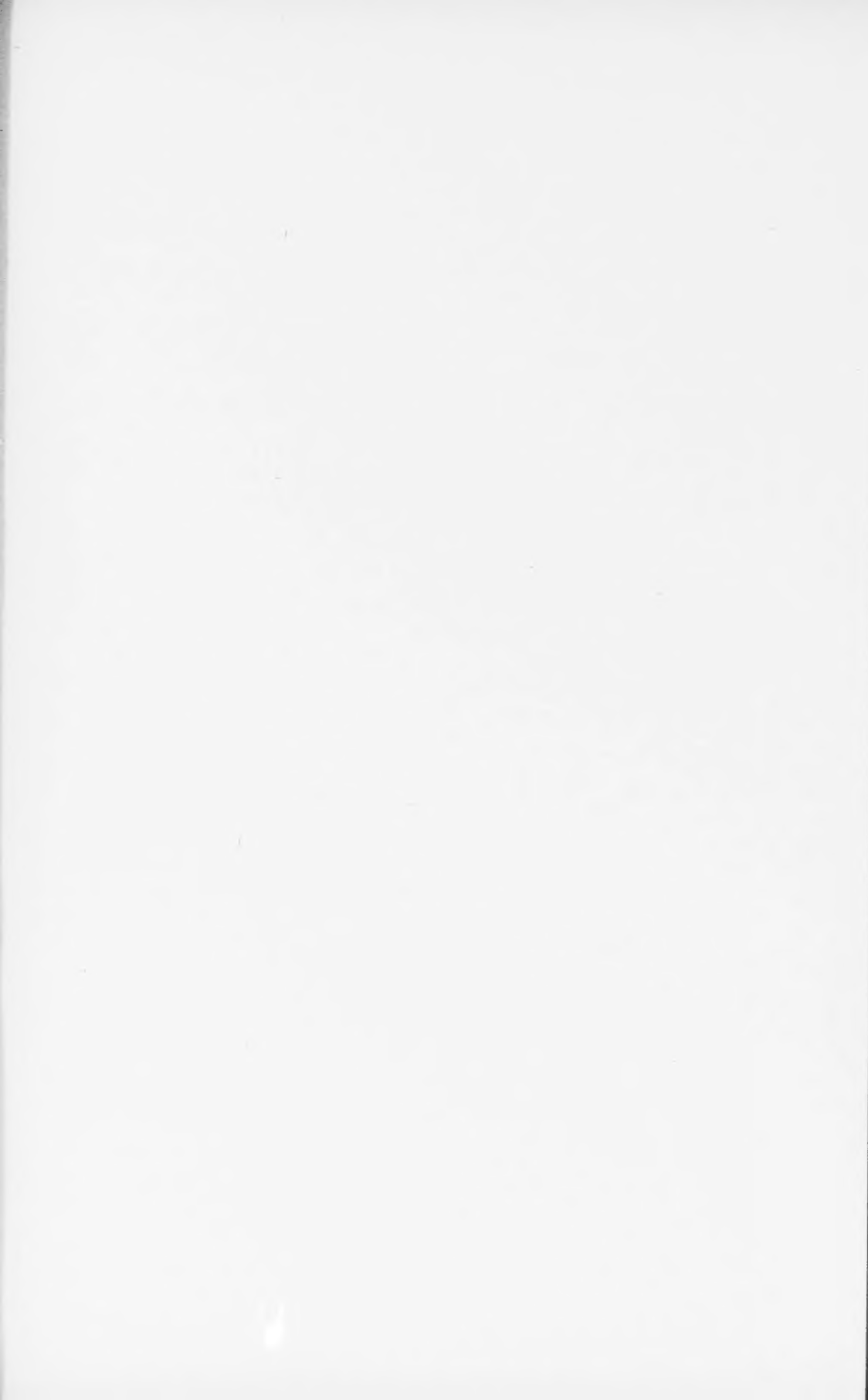
Notary Public: My Commission Expires:
TAMMY L. GILLUM, Notary Public
In and for the State of Ohio
My Commission Expires Mar. 30, 1988



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CERTIFICATE OF SERVICE: I hereby certify that on Oct. 21 1987 copies of the foregoing Petitioner's statement of Requested Action (Petition for Writs of Certiorari and Appeal) were served by certified mail on (i) The United States Court of Appeals, Federal Circuit, 717 Madison Place, Washington, D.C., (ii) The U.S. Merit System Protection Board (Office of Personnel Management, Appellate Policies Division), 1900 E. Street, N.W., Rm 7635, Washington, D.C. 20415, (iii) John E. Landers, Technical Analysis Division, Office of Pay and Benefits, P.O. Box 16, Washington, D.C., and (iv) Office of the Special Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, Washington, D.C. 20419, and (v) Solicitor General, Department of Justice, Washington D.C. 20530.

Archibald N. McMillan
Attorney for Petitioner (Appellant)



APPENDIX A



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MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

IN THE MATTER OF:)
) Docket
William F. Smith, Sr.) Number: CH
appellant,) 0831860229
)
v.)
) Date: May
Office of Personnel Management,) 29, 1986
agency.)
)
_____)

CERTIFICATE OF SERVICE

I certify that the enclosed decision was sent by regular mail this date to each of the following:

Appellant

Mr. William F. Smith, Sr.
1681 Wesleyan Road
Dayton, Ohio 45406

Appellant's Representative

Mr. Kenneth Legler, III
Attorney at Law
124 E. Third Street, Suite 100
Dayton, Ohio 45402

Agency Representative

John E. Landers, Chief
Technical Analysis Division
Office of Pay and Benefits Policy
Compensation Group
U.S. Office of Personnel Management
P.O. Box 16
Washington, D.C. 20044



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Other

Office of Personnel Management
ATTN: Appellate Policies Division
1900 E Street, N.W., Room 7635
Washington, D.C. 20415

/s/

Elizabeth Velez
Legal Clerk



APPENDIX A

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
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IN THE MATTER OF:)	
)	
William F. Smith,)	
appellant,)	Docket Nos.
)	<u>CH08318610229</u>
v.)	<u>CH08318610361</u>
)	
Office of Personnel	)	Date: <u>May 29,</u>
Management,	)	<u>1986</u>
agency.)	
	)	<u>Stephen E.</u>
	)	<u>Manrose</u>
	)	Adm. Judge
)	

INTRODUCTION

By petition filed on January 28, 1986, appellant appealed from an Office of Personnel Management (OPM) reconsideration decision dated January 16, 1986 which denied his petition requesting a recomputation of his Civil Service annuity benefits. On March 28, 1986, appellant filed a petition from a March 17, 1986 OPM reconsideration decision which superceded



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OPM's January 16, 1986 decision due to various typographical errors in the first decision. The March 17, 1986 reconsideration decision also denied appellant's request for a recomputation of his annuity benefits.

The petitions for appeal are consolidated for consideration. 5 C.F.R. § 1201.36. I held a hearing on April 22, 1986. Appellant's first petition for appeal is DISMISSED as moot. OPM's March 17, 1986 reconsideration decision is AFFIRMED.

FIRST PETITION FOR APPEAL

The first petition for appeal is dismissed as moot. - OPM's second reconsideration decision corrected certain typographical errors which were made in the first reconsideration decision. The March 17



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decision therefore superceded the January 16 decision. Since appellant's first petition for appeal was from the cancelled January 16 decision, the petition is moot and is dismissed. See Codrington v. Department of Justice, 1 MSPB 321 (1980).

SECOND PETITION FOR APPEAL

Jurisdiction - The Board has jurisdiction to adjudicate the merits of appellant's second petition for appeal. 5 U.S.C. § 8347(d) (1).

Background - Appellant was a career officer in the military service who retired from active duty in 1962. Following a period of unemployment, he became employed in a Federal Civil Service position with the Veterans Administration in 1974. He retired on a disability retirement in 1982 and elected a reduction in his monthly annuity to provide for a



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survivor benefit.

On January 11, 1985, appellant filed a letter with OPM in which he attempted to revoke his election for full survivor's benefits. OPM's March 17, 1986 reconsideration decision denied this request. It also found that appellant could not receive a minimum guaranteed annuity rate because he was receiving retirement pay based upon his military service.

Burden of Proof - Appellant has the burden of demonstrating, by preponderant evidence, that OPM's reconsideration decision is incorrect. See Brown v. Office of Personnel Management, 8 MSPB 471 (1981).

First Issue - Whether OPM properly denied appellant's request to revoke his election for a reduced annuity to allow for



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survivor benefits.

The undisputed documentary evidence shows that appellant attempted to revoke his election for a reduced annuity with survivor benefits subsequent to the final adjudication of his retirement claim and that when his retirement became final it provided for a survivor's annuity for his spouse. Pertinent law provides that a reduced annuity with survivor benefits is automatically provided for married employees who retire without specifically stating in writing "at the time of retirement" that they do not wish their spouses to receive a survivor annuity. 5 U.S.C. § 8339(j) (1). This law does not provide that the survivor annuity can be revoked following the effective date of the retirement. Since appellant has not otherwise demonstrated that a basis exists for his subsequent revocation request, I



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find that he has not shown, by a preponderance of the evidence, that OPM's decision in this respect is in error.

Second Issue - Whether OPM correctly computed the amount of appellant's annuity and whether its denial of appellant's request for a minimum guaranteed annuity was proper.

As discussed above, the record shows that appellant retired in 1982. OPM computed appellant's annuity based on the standard computation formula which provides for an annuity which is equivalent to a total of 1.5% of his average salary multiplied by 5 years and 1.75% of his average salary multiplied by his service time in excess of 5 years but under 10 years. Appellant testified that he was informed by a VA employee benefits specialist at the time of his retirement that he would receive an



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annuity which was equivalent to 40% of his average "high three" salary.

The law provides that an individual who retires with a disability retirement may be entitled to a minimum guaranteed annuity of 40% of his average salary, except that if the employee is also receiving military retirement pay, other than that based on a disability incurred in combat or other instrumentality of war, his annuity shall be calculated under the formula noted above (1.5% salary multiplied by 5 and 1.75% salary for service in excess of 5 but less than 10 years). 5 U.S.C. §§ 8332 (c) (1), (2), 8339 (a),



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(g).¹ The law also provides, however, that if the amount so calculated, when considered together with the military retirement pay, is less than the amount which may be payable for a disability retirement, an appropriate amount may be added to the annuity. 5 U.S.C. 8339 (g).

The evidence shows that since appellant is receiving military retirement pay which is not based on a disability incurred in

¹ Appellant argues that this provision is not applicable in his case since he became eligible for retirement benefits before the law became effective in December of 1980. I do not find this argument meritorious since appellant retired after the law became effective and he is therefore subject to its provisions.



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combat or other instrumentality of war,² he is 'not entitled to the minimum guaranteed disability retirement annuity of 40% of his average salary. The fact that a Veterans Administration employee benefits specialist may have incorrectly advised appellant that he was entitled to the 40% minimum annuity does not entitle appellant to the annuity since "unless a law has been repealed or declared unconstitutional by the courts, it is a part of the supreme law of the land and no officer or agency can by his actions or conduct waive its provisions or nullify its enforcement." Montilla v. United States, 457 F.2d 978, 987 (Ct. Cl. 1972).

²Appellant's testimony concerning the harassment he received from other military personnel does not establish that his separation was caused by a combat disability.

APPENDIX A

Appellant did not present evidence showing that his military retirement pay, combined with his civil service retirement annuity, was less than the 40% minimum guaranteed annuity. He has therefore not shown, by preponderant evidence, that he should have an "appropriate amount" added to his civil service annuity.



APPENDIX A

DECISION

Appellant's January 28, 1986 petition for appeal is DISMISSED. OPM's March 17, 1986 reconsideration decision is AFFIRMED.

This initial decision will become a final decision of the Merit Systems Protection Board on July 03 1986 unless a petition for review is filed by that date or the Board reopens the case on its own motion. 5 C.F.R. 1201.113, .117.

ADMINISTRATIVE AND JUDICIAL REVIEW

Any party to this appeal, the Director of the Office of Personnel Management, and the Special Counsel may seek to have this decision reviewed by the Board by filing a petition for review with:

Office of the Clerk
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D. C. 20419



APPENDIX A

in accordance with 5 C.F.R. 1201.114 of the Board's regulations. The petition for review must set forth objections to the initial decision, supported by references to applicable laws, regulations, and the record. The parties are required to serve any petition for review and any subsequent pleadings on all other parties. (It is not necessary to serve the regional office.)

Pursuant to 5 U.S.C. 7703 the appellant may obtain judicial review of the Board's final decision on this appeal, if the court has jurisdiction, by filing a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

APPENDIX A

Such a petition must be received by the court within thirty (30) days of the final Board's decision.

For the Board:

/s/

Stephen E. Manrose
Administrative Judge

APPENDIX B



APPENDIX B

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

_____)	
WILLIAM F. SMITH,	)	DOCKET NOS.
Appellant,	)	CH08318610229
	)	CH08318610361
v.)	
	)	DATE: Nov. 14,
OFFICE OF PERSONNEL	)	1986
MANAGEMENT,)	
Agency.)	
(CSA 2 452 888))	
_____)	

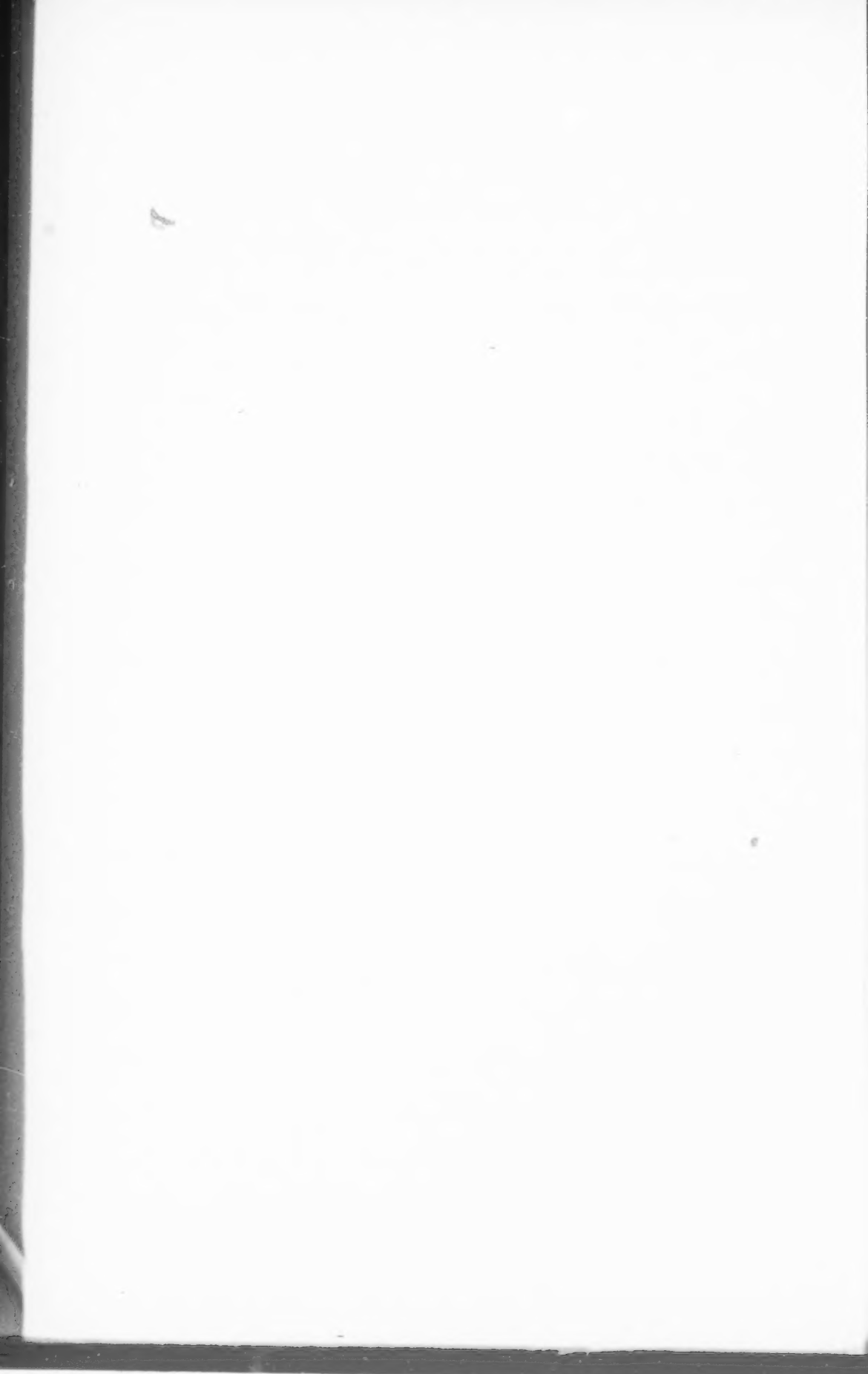
BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Dennis M. Devaney, Member

ORDER

After full consideration, the Board
DENIES appellant's petition for review of
the initial decision issued on May 29,
1986, because it does not meet the
criteria for review set forth at 5 C.F.R.

§ 1201.115* This is the Board's final
order in this appeal. The initial
decision is now final. 5 C.F.R. §
1201.113(b).



APPENDIX B

NOTICE TO APPELLANT

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal, if the court has jurisdiction. 5 U.S.C. § 7703. The address of the court is 717 Madison Place, N.W., Washington, D.C. 20439. The court must receive the petition no later than 30 days after you or your representative receives this order.

FOR THE BOARD:

/s/

Robert E. Taylor
Clerk of the Board

Washington, D.C.

* On July 10, 1986, the Board republished its entire rules of practice and procedure in the Federal Register. For ease of reference, citations will be to the Board's regulations at 5 C.F.R. Part 1201. However, parties should refer to Fed. Reg. 25, 146-72 (1986) for the text of all references to this part.



APPENDIX B

CERTIFICATE OF SERVICE

I certify that this ORDER was sent today:

By certified mail to:

Kennedy Legler, III, Esq.
Suite 100, 124 East Third Street
Dayton, OH 45402

By regular mail to:

William F. Smith, Sr.
1681 Wesleyan Road
Dayton, OH 45406

John E. Landers, Chief
Technical Analysis Division
Office of Pay and Benefits Policy
Office of Personnel Management
P.O. Box 16
Washington, D.C. 20044

Office of Personnel Management
Attn: Appellate Policies Branch
1900 E Street, N.W., Room 7635
Washington, D. C. 20415

Merit Systems Protection Board
Chicago Regional Office

By hand to:

Office of the Special Counsel
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D. C. 20419

11-14-86
(Date)

/s/
Robert E. Taylor
Clerk of the Board



APPENDIX B

Washington, D.C.

OFFICE OF THE SECRETARY
MAILED FOR SERVICE

NOV 14 1986

CTF. No. 441267

APPENDIX C



APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT

WILLIAM F. SMITH,)	
)	
Petitioner,	)	Appeal No. 87-
	)	3114
v.)	
	)	MAPB Docket No.
OFFICE OF PERSONNEL	)	CH08318610361
MANAGEMENT,)	
)	
Respondent)	

JUDGMENT

ON APPEAL from the Merit Systems
Protection

in CASE NO(S). CH08318610361

This CAUSE having been heard and
considered, it is ORDERED AND ADJUDGED:

AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/

Francis X. Gindhart, Clerk

DATED APR 20 1987

Issued as a mandate: May 12, 1987



APPENDIX D



APPENDIX D

Note: This Order will not be published in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent.

UNITED STATES COURT OF APPEALS FOR THE
FEDERAL COURT

WILLIAM F. SMITH,	)	Appeal No. 87-
	)	3114
Petitioner,)	
	)	MSPB Docket No.
v.	)	CH08318610361
)	
OFFICE OF PERSONNEL)	
MANAGEMENT,)	
)	
Respondent)	

Before FRIEDMAN, RICH, and DAVIS, Circuit Judges.

ORDER

A petition for rehearing and supplement to petition for rehearing having been filed in this case,

UPON CONSIDERATION THEREOF, it is



APPENDIX D

ORDERED that the petition and supplement
for rehearing be, and the same hereby are,
denied.

FOR THE COURT

/s/

Francis X. Gindhart,
Clerk

6/5/87

Date

cc: Mr. William F. Smith
Mr. Jonathan S. Baker, DOJ

FILED

U.S. COURT OF APPEALS
FOR THE FEDERAL
CIRCUIT

JUN 5 1987
Francis X. Gindhart
Clerk